

REMARKS

35 U.S.C. 112

The examiner rejected Claims 15, 27 and 31 as indefinite for reciting the limitation "the merged list." The examiner rejected Claims 20 and 28 for reciting "the second list."

Applicant has amended the claims.

35 U.S.C. § 102

The examiner rejected Claims 1-8, 15, 20-21 and 27-31 under 35 U.S.C. 102(e), as being anticipated by Kepecs (US 200110032128).

The examiner stated:

Claim 1, Kepecs teaches:

A computer-implemented method of determining a prioritized listing of offers for use to contact potential customers, the method comprises:

generating in a computer an ordered listing of offers from a set of offers, by which to contact a potential customer from a group of potential customers by considering the potential customer independently from others of the potential customers in the group,

during generating of the ordered list of offers for the potential customer (see paragraphs 12, 66) with generating comprising:

assigning offers by the computer based on individual attributes of the potential customer independently of corresponding attributes of the others of the potential customers in the group (see paragraph 27 "offers are customized for each individual consumer based on the particular consumer's purchase or shopping history and the consumer response to the offers"; see paragraph 96);

repeating generating for subsequent others of the potential customers to produce corresponding ordered lists (See paragraph 66-68): and

producing a second list of offers that is a list provided from the ordered lists of offers from the one and subsequent others of the potential customers, with the second list based upon a budget for contacting the potential customers in the group, (see paragraph 34, 66, 93, 94).

Claim 1 requires the features of "... generating by a computer an ordered list of offers ... to contact a potential customer from a group of potential customers by considering the potential customer independently from others ... with generating comprising: assigning offers ... based on individual attributes ... independently of corresponding attributes of the others ... repeating generating for subsequent others ... and ... producing ... a second list of offers that is a list

provided from the ordered lists of offers from the one and subsequent others of the potential customers, with the second list based upon a budget for contacting the potential customers in the group.

Applicant reminds the examiner that: "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983). The features set forth above are not described by Kepecs. Accordingly Kepecs cannot anticipate claim 1. Although Applicant has identified several features that Applicant considers as missing from Kepecs, Applicant will focus this argument on one combination of features in particular.

The examiner argues that Kepecs discloses: "assigning offers by the computer based on individual attributes of the potential customer independently of corresponding attributes of the others of the potential customers in the group (see paragraph 27 "offers are customized for each individual consumer based on the particular consumer's purchase or shopping history and the consumer response to the offers"; see paragraph 96)."

Paragraphs 27 and 96 are reproduced below:

[0027] The present invention pertains to techniques for generating and making incentive offers and promotions to consumers to influence the consumers' purchasing behavior. According to the teachings of the present invention, the offers are customized for each individual consumer based on the particular consumer's purchase history information (or shopping history) and the consumer's response to the offers. In this manner, the present invention achieves highly personalized and true one-to-one marketing targeted for an individual consumer.

[0096] In accordance with the present invention, marketing system 110 maintains state information for each consumer in a collection of data known as the "shopper profile" or "consumer profile" file. The state information for a consumer may include information related to the consumer's purchase history, offers made to the consumer, and the consumer's response to the offers (this information may also be stored in the "flog essence" file). The state information for a shopper also includes attribute information for the consumers. Attribute information includes calculations performed based upon the consumer's purchase history. The individual consumer state information is used by YME module 120 to determine how the consumer will be incented through offers. Based on the consumer's state information, the present invention is able to determine the effectiveness of a particular campaign and adjust to changing conditions. As indicated above, the state information for a consumer may be stored in a "consumer profiles" or "shopper profiles" file. The present invention also

maintains state information for all the consumers involved in a campaign in a "global profiles" file.

Nothing in these paragraphs relate to the actual assigning of offers. Assigning of offers is accomplished in Kepecs at Fig. 4, which manifestly does not take into consideration "individual attributes of the potential customer independently of corresponding attributes of the others of the potential customers in the group." Rather, in Fig. 4 what is considered during assignment are priority values of the offers, (406) product categories (420) and skipped and filler offers (428, 434). However, where Kepecs actually assigns offers to individual customers nothing concerning the "individual attributes of the potential customer independently of corresponding attributes of the others of the potential customers in the group" is taken into consideration.¹

The examiner argues that Kepecs discloses: **repeating generating for subsequent others of the potential customers to produce corresponding ordered lists (See paragraph 66-68)"** These paragraphs are reproduced below:

[0066] Arbiter 122 may then sort the offers based on their priority values (which may be composite values) to generate a sorted list of offers such that offers with higher priorities are placed higher up the list than offers with lower priorities, with offers having "special" priority values being placed at the top of the list (step 408). Arbiter 122 then determines if the number of active offers for the distribution channel selected in step 404 equals the maximum number of active offers for that channel (step 410). As indicated above, the maximum number of active offers for a channel may be configured by the user of the present invention or may alternatively be determined by the nature of the distribution channel.

[0067] If the number of active offers is equal to the maximum threshold for the distribution channel, thus indicating that no more offers may be activated using this distribution channel, arbiter 122 then determines if there are any more unprocessed (i.e. distribution channels for which offer selection has not been performed for the consumer selected in step 402) distribution channels (step 412). If all channels for the consumer have been processed, processing proceeds with step 402 wherein arbiter 122 selects the "next" consumer for whom offer selection is to be performed. If unprocessed channels exist for the consumer, arbiter 122 then selects the next unprocessed channel for which offer selection is to be performed according to step 404.

[0068] If arbiter 122 determines at step 10, that the maximum threshold of active offers for the selected distribution channel has not been

¹ To assist the examiner in understanding this distinction, please see p. 9 of the specification.

reached, arbiter 122 selects an offer from the sorted list generated in step 408 with the highest priority and which has not been tagged as "skipped" (the "skipped" tag is explained below) (step 414). Arbiter 122 then determines if the priority value associated with the offer selected in step 414 is "special" (step 416). If arbiter 122 determines the priority associated with the offer to be "special," arbiter 122 activates that offer selected in step 414 for the channel selected in step 404 (step 418). Arbiter 122 then determines if any offers exist in the sorted list which have not been activated and which have not been tagged as "skipped" (step 426). If such offers exist processing continues with step 410, else processing continues with step 428.

Nothing in these paragraphs suggest, much less describe, repeating generating for subsequent others of the potential customers to produce corresponding ordered lists. Nothing in Kepecs discloses that there is one ordered list of offers from a set of offers, by which to contact a potential customer generated for each customer or customer group. Rather, Kepecs sorts offers based on their priority and merely assigns them to customers according to the priority of the offer. Moreover, it also appears that orders are activated in specific channels and delivered to customers as each is run through the assignment process in Fig. 4.

Priority is determined by Kepecs according to [0061].

[0061] YME module 120 may also associate priorities with offers. These priorities influence the manner in which arbiter 122 selects offers to be distributed/advertised to the consumer. For example, a priority value ("special" priority) may be associated with an offer instructing arbiter 122 to always select the offer. Priorities may also be assigned according to a sliding rule scale, such that offers with higher priorities assigned to them are more likely to be selected than offers with lower priorities associated with them. Further, multiple priorities of different types may be assigned to the same offer or may be used to determine the priority for the offer.

The priorities do not appear to be related to the "individual attributes of the potential customer," much less considering that: "... independently of corresponding attributes of the others of the potential customers in the group."

The examiner also argues that: "... producing a second list of offers that is a list provided from the ordered lists of offers from the one and subsequent others of the potential customers, with the second list based upon a budget for contacting the potential customers in the group, (see paragraph 34, 66, 93, 94)."

These paragraphs are also reproduced below:

[0034] According to an embodiment of the present invention, information identifying members to be included in a household may be provided by a consumer when the consumer applies for a loyalty card. It should however be apparent that consumers may request to be grouped together to form a household even after the loyalty cards have been assigned. For example, a first consumer who has been assigned a consumer identification code may request to be logically linked to a second consumer who has already been assigned a consumer identification code. The first consumer may or may not know the identity of the second consumer. According to an embodiment of the present invention, the first consumer may be provided a list of consumer identification codes assigned by the retail store to other to be linked with the first consumer's identification code. The identities of the other consumers associated with the identification codes provided by the first consumer need not be known to the retailer (the retailer may also not know the identity of the first consumer-the retailer may only know the identification code). In alternate embodiments, the present invention may link the first consumer with a second consumer identification code based on the first and second consumer's shopping patterns or information explicitly provided by the consumer such as address or phone number. Other techniques known to those of ordinary skill in the art may also be used to group consumers

[0066] Arbiter 122 may then sort the offers based on their priority values (which may be composite values) to generate a sorted list of offers such that offers with higher priorities are placed higher up the list than offers with lower priorities, with offers having "special" priority values being placed at the top of the list (step 408). Arbiter 122 then determines if the number of active offers for the distribution channel selected in step 404 equals the maximum number of active offers for that channel (step 410). As indicated above, the maximum number of active offers for a channel may be configured by the user of the present invention or may alternatively be determined by the nature of the distribution channel.

[0093] GUI 600 also allows the user to specify information about various budget values. Budgets may refer to the markdown dollars that a campaign designer or retailer is willing to spend on a campaign. Markdown dollars refer to the amount of discount below the shelf price which is spent to promote the incented product. The value specified in "shopper budget" field 630 indicates the total markdown dollars per campaign that a campaign designer or retailer is willing to spend on a particular consumer. YME module 120 will not generate new offers on an incented product for a consumer who has already had this many markdown dollars redeemed on the same incented product.

[0094] The retailer and/or the manufacturer may each contribute markdown dollars towards the promotion of the incented product. Accordingly, GUI 600 includes minimum, maximum, and target fields for the retailer ("Min Product Budget" field 632, "Target Product Budget" field 634, and "Max Product Budget" field 636) and for the manufacturer ("Min CPG Budget" field 638, "Target CPG Budget" field 640, and "Max CPG Budget" field 642). The value specified in Min Budget field 632 and/or 638 indicates the minimum amount of markdown dollars that a retailer and manufacturer, respectively, is willing to spend in aggregate on promoting the incented product. The retailer or manufacturer generally commits up front to spend this amount. In accordance with the present invention,

marketing system 110 may adjust the priority associated with an offer (i.e. influence the probability that the offer is selected to be presented to the consumer) to achieve this level of expense. The value specified in Max Budget field 636 and/or 642 indicates the maximum liability that the retailer or manufacturer is willing to incur on every consumer who sees the offer and accepts the offer. In accordance with the present invention, YME module 120 may be configured not to generate an offer that would cause the maximum budget limit to be violated. The value specified in target budget field 634 and/or 640 indicates the target amount of markdown dollars that the retailer and the manufacturer, respectively, would like to spend on the product promotion. Marketing system 110 strives to achieve this target when generating offers and selecting offers to be presented to the consumer.

Kepecs [0034] discusses identifying members to be included in a household. Applicant does not understand how the examiner considers this paragraph as related to the claimed feature. Kepecs [0066] discusses how the Arbiter 122 sorts offers based on their priority values to generate a sorted list of offers and determines active offers for a channel. However, this is the same teaching that the examiner uses for the preceding feature of claim 1, namely "generating for subsequent others of the potential customers to produce corresponding ordered lists." It is manifestly apparent that this specific teaching cannot be used to describe the first set of ordered lists and the second ordered list limitations of claim 1.

Kepecs [0093] discusses a GUI 600 that allows the user to specify information about various budget values. While this teaching introduces the concept of a budget, the teaching when read in conjunction with the remaining teachings of Kepecs does not suggest the feature of claim 1. Kepecs [0094] continues with a discussion of the GUI 600 and how it allows the retailer and/or the manufacturer to contribute markdown dollars towards the promotion of the incented (sic) product. Again, this teaching in [0094] does not suggest the claimed feature of "producing by the computer a second list of offers that is a list provided from the ordered lists of offers from the one and subsequent others of the potential customers, with the second list based upon a budget for contacting the potential customers in the group."

Nowhere does Kepecs describe producing a second list of offers provided from the ordered lists of offers from the one and subsequent others of the potential customers.

Applicant has amended claim 6 to require: "... eliminating any offers ... to each customer based on eligibility rules ... and when a rule is violated generating one or more

alternative offers ... and performing an ordered merge according to profitability of the one or more alternative offers with the original list of offers.”² These features are neither described nor suggested by Kepecs.

35 U.S.C. 103

The examiner rejected Claims 9-14, 16-19, 22-26 and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Kepecs (US 200110032128) in view of Galperin (US 6,993,493).

Claims 9-14, 16-19, 22-26 and 29-30 are neither described nor rendered obvious over Kepecs and Galperin at least for the reasons given in their base claims in that Galperin if combined with Kepecs does not cure the deficiencies in Kepecs as pointed out above.

These claims further distinguish for reasons of record.

In Response to Applicant's Arguments the examiner addressed some of the features/arguments raised by Applicant such as “assigning offers by the computer based on individual attributes of the potential customer independently of corresponding attributes of others of the potential customers in the group” and “repeating generating for subsequent others of the potential customer to produce corresponding ordered lists.” Applicant disagrees with the examiner's contentions for reasons given above.

However, Applicant notes that nowhere in these statements did the examiner address the feature of claim 1, “producing by the computer a second list of offers that is a list provided from the ordered lists of offers from the one and subsequent others of the potential customers, with the second list based upon a budget for contacting the potential customers in the group,” which was the bulk of Applicant's prior argument.

Accordingly, for the reasons given above claim 1 and the remaining claims are neither described nor rendered obvious by Kepecs or Kepecs in view of Galperin.

It is believed that all the rejections and/or objections raised by the examiner have been addressed.

² The features of this amended claim are supported in the specification as filed, at least at page 12, line 5 to page 14, line 31.

In view of the foregoing remarks, applicant respectfully submits that the application is in condition for allowance and such action is respectfully requested at the examiner's earliest convenience.

All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The required fee **\$1100** for the Petition for Extension of Time is being paid concurrently on the electronic filing system by way of deposit account authorization.

Please apply any other charges or credits to deposit account 06-1050, referencing attorney docket no. 10235-0026001.

Respectfully submitted,

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